

**AGREEMENT FOR THE SUPPLY OF
AEGIS™ VIDEO
CENTRAL MONITORING AND CONTROL SYSTEM
to
THE SOUTH DAKOTA LOTTERY**

**AGREEMENT FOR SUPPLY OF THE AEGIS VIDEO LOTTERY CENTRAL
MONITORING AND CONTROL SYSTEM (CMCS) AND RELATED
MAINTENANCE SERVICES**

AGREEMENT dated as of the 14 day of May, 2009 for the supply of an Aegis-Video Central Monitoring and Control System and related support and maintenance services (hereinafter the "Agreement")

BY AND BETWEEN:

SCIENTIFIC GAMES INTERNATIONAL, INC. ("Scientific Games"), a Delaware corporation with its principal place of business located at 1500 Bluegrass Lakes Parkway, Alpharetta, GA 30004;

and

SOUTH DAKOTA LOTTERY ("Lottery"), a division of the Department of Revenue & Regulation, with offices located at PO Box 7107, 207 East Capitol, Pierre, SD 57501.

Recitals:-

WHEREAS, Scientific Games is the provider of the Central Monitoring and Control Systems and technology, and wishes to provide to the Lottery a Central Monitoring and Control System (CMCS), associated equipment and programming, related services and support and maintenance services of the CMCS to the Lottery;

WHEREAS, the Lottery wishes to acquire a CMCS, associated equipment and programming and related services, support and maintenance services of the CMCS from Scientific Games;

NOW, THEREFORE, the Parties have agreed to the following terms and conditions:

Operative Clauses:

1. DEFINITIONS AND INTERPRETATION.

1.1. The meanings and interpretations of capitalized terms used in this Agreement shall be as defined in Schedule 1 to this Agreement, unless expressly stated or the context otherwise requires.

1.2. In this Agreement, except where the contrary is expressly stated or the context otherwise requires, any reference to a Clause, Schedule or Recital is to a recital of, clause of, or schedule to, this Agreement (as the case may be).

1.3. The Schedules form an integral part of this Agreement, and reference to this Agreement includes reference to them. The Schedules contained in this Agreement are as follows:

Schedule 1	-	Definitions
Schedule 2	-	Support and Maintenance Services
Schedule 3	-	Lottery's Obligations
Schedule 4	-	Software License Agreement
Schedule 5	-	Confidentiality Agreement

1.4. Headings are inserted for convenience only and do not affect the construction of this Agreement.

1.5. Unless the context otherwise requires in this Agreement the singular shall include the plural and vice versa and references to persons shall include bodies corporate, unincorporated associations and partnerships.

2. PURPOSE

2.1. In accordance with the terms and conditions of this Agreement, Scientific Games agrees to provide, develop and install a CMCS, and provide technical support and maintenance services in connection therewith, as defined by the AEGIS-Video Upgrade Statement of Work dated September 19, 2008 and further defined in this Agreement consisting of the following:

2.1.2. the System, in accordance with the agreed upon Functional Specification and including (i) duplex primary CMCS, (ii) duplex back up CMCS (iii) simplex test components and (iv) site controllers, that has successfully completed Scientific Games' quality control procedures;

2.1.3. development or supply of all Software needed to operate the System in compliance with the Functional Specification and provision of all software licences in accordance with the agreed upon Functional Specification required for the System;

2.1.4. installation of the System, to begin no sooner than June 1, 2009, in accordance with the agreed upon Scope of Work and including associated labor and travel required to deliver and to install the primary CMCS, back up CMCS, test systems. Installation of site controllers will begin no sooner than August 1, 2009;

2.1.5. subject to the payment of the agreed upon licensing fees, licensing to the Lottery the Software in accordance with Clause 12;

2.1.6. subject to the payment of agreed upon licensing fees, a license in Scientific Games Proprietary Materials in accordance with the Agreement set out at Schedule 4;

2.1.7. provision of Support and Maintenance Services specified in Schedule 2, and ancillary support services as may be agreed by the Parties from time to time;

2.1.8. provision of Documentation; and

2.1.9. Certification of the System provided at the cost of the Lottery.

2.2. Scientific Games will supply, install, implement, test, maintain and support the

System as set forth in this Agreement and in the agreed upon Project Plan executed by the parties (which may be amended from time to time) and which shall be attached to and incorporated into this Agreement as Schedule 6 (the "*Project Plan*").

2.3. Except as otherwise provided in this Agreement, Scientific Games will furnish the labor, materials, equipment, tools, and supplies necessary to complete the Project in accordance with this Agreement.

3. INSTALLATION, PROJECT AND SCOPE OF WORK

3.1. Functionality of the system will be determined by the Functional Specifications agreed to and signed by the Lottery.

3.2. Changes to the Functional Specifications represent a change in the agreed upon delivery and shall be subject to the agreed upon Change Control Procedure as defined in the mutually agreed upon Project Plan and shall be subject to the final review and approval by the respective appointed Lottery's and Scientific Games' Project Managers. Minor modifications to the Central Monitoring and Control System shall be considered within the original scope of the Functional Specifications, not to exceed two hundred (200) work hours to perform. Changes exceeding the two hundred-hour allocation of work hours shall require payment of additional compensation to Scientific Games and will be mutually negotiated and agreed to by the Lottery and Scientific Games.

3.3. Modifications to the Central Monitoring and Control System to comply with the Functional Specifications prior to acceptance of the Central Monitoring and Control System or noted as a condition of such acceptance by the Lottery shall not count towards the work hours performed as outlined in Clause 3.2 above.

3.4. Installation of the System and its relevant components shall be carried out in a good and workmanlike manner by Scientific Games pursuant to the agreed upon Project Plan and the Scope of Work.

3.5. Any change to the Project Plan and the Scope of Work prior to Acceptance Date shall be subject to the agreed upon Change Control Procedure and shall be subject to the final review and approval by the respective appointed Lottery's and Scientific Games' Project Managers.

3.6. The Lottery shall provide a secure computer room environment for use at the Central Site in accordance with the subsequently agreed upon signed Project Plan.

3.7. The Lottery shall have the responsibility for the costs associated with communications between the Central Site and any Remote Site.

3.8. Scientific Games will coordinate and implement all communication links to Remote Sites that enables the System to communicate with the Remote Sites

3.9. The Lottery will provide a secure room to function as the primary control room for Scientific Games to coordinate the migration of remote locations.

3.10 The Lottery will be responsible for operating the System during the conversion process commencing upon the connection of the first Site Controller to the System.

3.11 Delivery of the System and Site controllers shall take place CIF at Scientific Games' warehouse in South Dakota. Risk of loss shall remain with Scientific Games until the Site controller is installed at a Lottery retailer location, at which time title shall pass to the Lottery and then immediately to the individual lottery operator from the Lottery.

4. TECHNOLOGY UPGRADE

4.1 During the Term of the Agreement the Lottery has the option to perform a technology upgrade. If the State elects to exercise such option by notifying Scientific Games in writing of such election, the following terms will apply:

4.1.1 The Lottery agrees to pay for the hardware, software and all costs associated with the purchase and all related shipping costs of the hardware and software.

4.2 Scientific Games will recommend and must approve the appropriate hardware to be purchased by the Lottery.

4.3 Scientific Games will install and configure the currently operating version of the Software on the primary, backup and test systems at no cost to the Lottery.

4.4 The technology upgrade will be considered part of the 1,000 hours of system software maintenance and hardware support during each calendar year or proportionate number of hours for part of a calendar year.

4.5 Scientific Games will be responsible for travel expenses for Scientific Games resources in support of the technology upgrade.

The technology upgrade is strictly limited to the installation and configuration of the Software currently operating on the System at the time of the technology upgrade. The technology upgrade shall not include the installation or configuration of any version of Software, or any other software, other than that currently operating on the System at the time of the technology upgrade. Any other requested Software upgrades will be considered enhancements and will be subject to a scope of work and Software specifications. If such enhancements exceed the agreed upon 1000 hours of system software maintenance the enhancements will be subject to additional compensation to be mutually negotiated and agreed upon by the Lottery and Scientific Games. The operating system may be updated at the discretion of the Lottery at a rate, for services beyond 1,000 hours, to be mutually negotiated and agreed upon by the Lottery and Scientific Games.

5. ACCEPTANCE TEST FOR THE SYSTEM

5.1. The purpose of the Acceptance Tests is to determine whether the System and the Hardware comply with the Functional Specification. The Parties shall agree on a suitable testing regime which details what constitutes successful completion of the Acceptance

Tests.

5.2. Acceptance Tests shall be conducted as set out in and in accordance with the agreed upon Project Plan.

5.3 The South Dakota Lottery will complete user acceptance testing within six (6) weeks of the System being submitted by Scientific Games for acceptance testing. The start of UAT will begin no sooner than July 1, 2009. The purpose of the user acceptance testing is to determine terminal functions and Central Monitoring and Control System compatibility at its headquarters in Pierre, SD. If the Central Monitoring and Control System fails the acceptance test conducted by the Lottery, Scientific Games shall correct Severity 1, Severity 2 and Severity 3 problems identified by the Lottery within a mutually agreed upon timeframe. Upon completion of the required modifications, the Lottery may, within seven (7) days begin a new user acceptance test of the Central Monitoring and Control System. Any delays in correcting the identified Severity 1 or Severity 2 problems may cause the Lottery a corresponding delay in issuing a written certification of acceptance. Severity 3 problems that require additional Lottery staff resources to implement the work around may cause the Lottery to delay written certification of acceptance. Severity Level 4 problems shall not be cause for the delay of written certification of acceptance by the Lottery. The parties shall mutually agree upon the applicable severity level after an initial analysis of the problem.

5.4 Unless otherwise agreed between the Lottery and Scientific Games, within fourteen (14) days from the date of completion of South Dakota Lottery conducted user acceptance testing, the Lottery shall issue a written certification ("**Acceptance Certificate**") of complete acceptance or rejection of the System.

5.5 Upon execution of the Acceptance Certificate, or the Lottery's failure to issue the Acceptance Certificate within such fourteen (14) days, the System shall be accepted.

5.6 In the event that the Lottery does not agree that the Acceptance Tests have been passed it shall, within fourteen (14) Days of completion of the South Dakota Lottery conducted UAT, notify Scientific Games in writing with a detailed explanation of why it believes the Acceptance Tests have not been passed. Should Scientific Games accept that the Acceptance Tests have not been passed, Scientific Games will correct such errors within a reasonable time period to be agreed by both parties and repeat the applicable Acceptance Tests and the terms of Clauses 5.1 through 5.8 will apply to each such re-test as appropriate. Should Scientific Games reject the Lottery's explanations, Scientific Games shall respond to the Lottery in writing within seven (7) Days of its receipt of the Lottery's explanation of its objection including reasons. Such dispute shall be resolved in accordance with Clause 28.

5.7 Should the Lottery use the System commercially, it shall be deemed to have accepted the System. Scientific Games shall remedy notified defects as agreed between the Parties in a mutually agreed upon timeframe.

5.8 The Lottery shall be responsible for all costs associated with any third party or independent testing.

6. COMPENSATION AND PAYMENT

6.1. As consideration for the supply of the System, the licensing of Software (as set forth in Schedule 4), and Support and Maintenance Services agreed to be provided by Scientific Games under this Agreement, the Lottery shall pay to Scientific Games payments and ongoing fees in accordance with the following provisions.

6.2 The State will pay a License Fee of \$2,900,000 USD due in installments upon performance milestones listed below. These fees will be due based on completion of the following milestones in accordance with the Project Plan ("Milestone Payment"):

<u>Deliverable</u>	<u>Payment</u>
Agreement and Project Plan Signed by both parties	25%
System Delivered for UAT and Signed Functional Specifications	40%
Earlier of Completion of Scheduled Venue Migration to AEGIS Video or November 30, 2009	35%

Payment of the Milestone Payments shall not relieve either party of their respective obligations to perform pursuant to the Project Plan.

6.3 The price for the initial order of Site Controllers will be \$1,761,750 (\$1,305 each) for 1,350 site controllers to be installed during the implementation period. The price for Site Controller units in addition to the initial order of 1,350 will be \$1,305.00 per installed site controller. Installation costs will be \$325 per site. An additional fee may be charged for those installations requiring additional hardware. The price for additional Site Controller units intended for use as spare Site Controllers, and not installed during the implementation period, shall be \$1,305. The parties agree the price for spare Site controllers, and any additional installation services, subsequent to the initial order shall be at a price established by Scientific Games. The total number of Site controllers for the initial order by the Lottery shall be provided to Scientific Games by the Lottery within 30 days following execution of the Agreement by the parties.

Installation includes only installation by Scientific Games and connection of the Site controller to the existing communication network and does not include venue infrastructure wiring or changes. These fees will be due by the Lottery based on the following process:

Scientific Games will provide a list of installed site controllers and associated install costs by the 15th and last day of the month. Lottery will collect the site controller cost from the licensed Operators and provide payment of such plus installation cost to Scientific Games with the next bi-monthly period payment.

Scientific Games reserves the right to assess the Lottery, in good faith, a reasonable fee for return visits to retailers for installation due to the cancellation, or any other refusal to allow installation with less than three (3) days notice prior to a previously scheduled installation appointment.

6.4 Commencing August 3, 2009, the Lottery shall pay to Scientific Games 0.30% of Net Machine Income in each Bi-Monthly Payment Period (the "Video Lottery Fee") for those machines reporting to the new System. In partial consideration for the Video Lottery Fee, Scientific Games agrees to support the existing AGS video lottery system through completion of scheduled venue migration.

6.5 The parties agree that a delay in the performance of the Project Plan caused by the Lottery or any third party, including, by way of example, due to a Lottery requested change in the Project Plan, failure of a retailer to appear for a scheduled installation or otherwise fail to cooperate, or the failure of another Lottery vendor to cooperate, shall not cause any delay in payment to Scientific Games under this Agreement effective upon the originally agreed or subsequently amended performance date in the Project Plan.

7. ADDITIONAL PAYMENT AND REPORTING PROVISIONS

7.1. All payments under this Agreement are subject to the following provisions.

7.1.1. **Payment Terms:** The Lottery shall make all Video Lottery Fee payments based on Net Machine Income for the applicable Bi-Monthly Payment Period, as described in Clause 6.4. Video Lottery Fee payments shall be calculated by applying the rate set forth in paragraph 6.4 to the Net Machine Income for the applicable Bi-monthly Payment Period, as derived from reports of Net Machine Income and a format as to which Scientific Games and the Lottery shall mutually agree on. Payments for any partial Bi-Monthly Payment Period shall be based on the number of days included in such partial Bi-Monthly Payment Period. Lottery shall provide Scientific Games, on a form provided by Scientific Games, bi-weekly reports containing daily information concerning the number of gaming machines in operation, total cash in, total cash paid out as prizes, total net cash, Lottery's net revenue and Scientific Games' payment.

7.1.2. **Currency:** The License Fee is stated and shall be paid in United States Dollars.

7.1.3. **Delay in Payment:** In the event that payment is delayed by more than fifteen (15) days after the Due Date, interest at the rate of 2% per month, or the highest amount allowed by law (if less), starting from the day immediately following the Due Date shall be imposed on such amounts. Said default interest rate shall apply with respect to all amounts which may have become due under the Agreement, without prejudice to other remedies which may be available to Scientific Games. Due Date will be mutually agreed to by the Lottery and Scientific Games.

7.1.4. **Associated Taxes:** Payment of taxes and application and annual fees for the application, registration and licensing of each of the Gaming Machines, premises or for license and application fees of Lottery are payable by the Lottery. **If the lottery has tax exempt status, the Lottery shall furnish Scientific Games a copy of their**

tax exempt certificate, at time of Agreement signing. If the certificate isn't received by Scientific Games, the Lottery is obligated for any and all taxes.

8. WORK ENVIRONMENT AND EMPLOYEES

8.1. The Lottery will provide facilities referred to as the Central Site in which the System will be located as required. All Site costs, Site preparations, security, environmental considerations and modifications, health and safety requirements will be the responsibility of the Lottery.

9. TERM

9.1. This Agreement shall be valid as from the Effective Date and shall continue until the earlier of (i) the expiry of ten (10) years after receipt of the final Milestone Payment per Clause 6.2 of this agreement ; or (ii) an earlier termination pursuant to the provisions of Clause 18 of this Agreement (the "Term"). The Lottery may, at its sole option, extend the Agreement per Clause 9.2.

9.2. The Lottery may, at its sole option, extend this Agreement for up to five (5) one-year terms or any combination thereof for a total Agreement term not to exceed fifteen (15) years, provided the Lottery will notify Scientific Games in writing of its intent to extend this Agreement not later than ninety (90) days before the beginning of any such extension.

10. END OF AGREEMENT CONVERSION AND TRANSITION

10.1 In anticipation of the termination date of this Agreement, consistent with any established end-of-contract phase-out schedule and consistent with the new system conversion schedule established between the Lottery and any successor contractor, Scientific Games must exercise its best efforts and cooperation to effect an orderly and efficient transition to any successor contractor, subject to appropriate protection of each party's confidential or proprietary information.

10.2 In the interest of an effective end of contract transition to any successor contractor, the Lottery reserves the right to extend this Agreement for up to 180 days.

11. LIQUIDATED DAMAGES

11.1 Lottery and Scientific Games agree that it will be impractical and difficult to determine actual damages which Lottery will sustain in the event any of the following circumstances occur. Therefore, the Parties agree that liquidated damages as specified in this Clause 11 are reasonable and are not to be construed as a penalty.

11.2. Upon determination that liquidated damages are to or may be assessed, Lottery shall notify Scientific Games of the potential assessment in writing. All assessed liquidated damages will be deducted from any moneys owed Scientific Games by Lottery and in the event the amount due Scientific Games is insufficient to satisfy the amount of the liquidated damages, Scientific Games shall pay the balance to the Lottery within thirty

(30) calendar days of written notification, or the balance will be deducted from future payments.

11.3. Where actual damages can easily be determined, the amount of liquidated damages shall not exceed damage actually incurred by the Lottery. Assessment of liquidated damages shall be in addition to, and not in lieu of, such other remedies as may be available to the Lottery.

11.4. Scientific Games shall not be liable for liquidated damages to the extent the incident was caused by the Lottery (including the failure of the Lottery to provide qualified resources or to respond to reasonable requests from Scientific Games for information or decisions), its retailers, third parties, telecommunications failures or events of Force Majeure.

11.5. The failure of the Lottery to assess liquidated damages in any instance where the Lottery is entitled to liquidated damages pursuant to the terms of this Agreement shall not constitute a waiver in any fashion of the Lottery's rights to assessment of liquidated damages.

11.6 In the event any of the following circumstances occur, the Lottery may assess any combination of liquidated damages in the following amounts:

11.6.1. Unauthorized Software or Hardware modifications – in the event that Scientific Games modifies Software or Hardware after acceptance of the System without prior written approval of the Lottery - \$5,000 per incident until corrected.

11.6.2. Failure to Respond to Severity 1 or Severity 2 Event – in the event Scientific Games fails to respond to a Severity 1 or Severity 2 event in accordance with the Support and Maintenance Services described in Schedule 2 - \$1,000 per incident per day until Scientific Games responds to the event.

11.6.3. Scientific Games Failure to Deliver - In the event Scientific Games fails to facilitate the completion and acceptance of the Project within agreed to and signed Project Plan up to \$15,000 per day until performance is brought into compliance with the Project Plan.

11.6.4. Following acceptance of the System, in the event that Scientific Games fails to maintain System functionality in accordance with the agreed upon and signed Functional Specifications, including any amendments, that results in (i) the inability of a gaming machine to conduct any gaming transaction or all gaming transactions, and (ii) actual loss of Net Machine Income for the Lottery, the Lottery may assess liquidated damages in the amount of the average Net Machine Income for the gaming machine(s) suffering such loss during the previous three (3) months of operation per day until system functionality is restored.

11.6.5. Following acceptance of the System, in the event that Scientific Games fails to complete (1) a periodic maintenance release, (2) enhancements and general business improvements, (3) an agreed upon technology upgrade, or (4) fixes to Severity Level 1 and 2 problems with AEGIS-Video Lottery system by the mutually

agreed upon deadline established by the Lottery and Scientific Games – up to \$5,000 per day until completed.

12. OWNERSHIP OF HARDWARE, SOFTWARE, INTELLECTUAL PROPERTY AND OTHER RIGHTS

12.1. The Parties agree that all right, title and interest in and to the Hardware shall transfer to Lottery upon receipt of full payment of the fees set forth in Clauses 6.2 and 6.3 by Scientific Games. The parties acknowledge and agree that all right, title and interest in and to the Software remains with Scientific Games.

12.2. Lottery acknowledges and agrees that (as between the parties) Scientific Games is, and at all times will remain, the sole and exclusive owner of, and has and will at all times retain, all right, title, ownership and interest in the Software, System, Documents, (including without limitation any copies and derivative works thereof) source code in relation to the System and Software and including, without limitation, all Intellectual Property rights therein and thereto with the exception of a non-transferable perpetual license to use by the South Dakota Lottery, Scientific Games Video Lottery Terminal Communications Protocol for South Dakota Central Control System –Revision C and D as defined in Schedule 4. All additions, attachments, accessories and repairs, corrections, modifications, improvements and enhancements to the Documents and the System (or any part thereof) at any time made or placed by or on behalf of Scientific Games thereto shall become part of the applicable System and shall be (and at all times remain) the property of Scientific Games. No right, title or interest are transferred or granted by implication in or to the System or any other component, other than those expressly granted in this Agreement. To the extent (if at all) that any such ownership or other rights, title or interest become (whether by operation of law or otherwise) vested in Lottery, Lottery hereby unconditionally and irrevocably assigns and agrees to assign the same (by way of, where necessary, present assignment of future rights) to Scientific Games (with full title guarantee) throughout the world and for the full period of such rights, and shall enter such documents and perform such acts (at no cost to Scientific Games) as are required or otherwise reasonably requested by Scientific Games to confirm, obtain and perfect such assignment and Scientific Games' rights in and other legal protection for the applicable item(s) and if Lottery fails to so enter or act Lottery hereby appoints Scientific Games to so enter and act as its agent.

12.3. Scientific Games hereby grants to the Lottery a non-exclusive, non-transferable, and non-perpetual license, with no right to sublicense, for the Term of this Agreement, for Lottery to use the Software (in object code only) solely in connection with Lottery's operation of the System in South Dakota. The Software is licensed for use only as set out in this Clause 12.3 and the Lottery shall not make any copies or use thereof except as expressly permitted herein. Without limitation, the Lottery agrees not to use any of the Software for the purpose of providing data processing or other service bureau or time sharing services to any third parties, and agrees not to use the Software in connection with any gaming software or system other than the System supplied by Scientific Games. Any use, copying or distribution of the Software or part thereof, which is not expressly permitted pursuant to the terms of this Agreement, is strictly prohibited and Scientific Games hereby reserves for itself and retains all rights in and to the Software and any and all Intellectual Property rights inherent therein or appurtenant thereto.

12.4. Lottery agrees and warrants that it will not itself and will not permit any Third Party to (a) alter, adapt, translate, publish, display, create derivative works from or modify the whole or any part of the Software licensed hereunder or any other system components, (b) permit the whole or any part of the Software to be combined with, or become incorporated in, any other program, (c) copy, decompile, decode, disassemble, adapt or reverse engineer the Software, System (or any portion thereof), nor attempt to, or permit any Third Party to, do any such things, (d) except as expressly authorized under this Agreement, use, transfer, sublicense, lease, sell, share, disclose, distribute or otherwise make available to others any portion of the Central Monitoring and Control System or other system component(s), (e) modify or delete any copyright or other proprietary right notices, legends, markings or labels (or any portion thereof) on or in the any Central Monitoring and Control System or other system component(s), and/or (e) make copies of any documents relating to the Software (or permit any Third Party to do the same) except as permitted by Scientific Games expressly and in writing.

12.5. Scientific Games agrees to defend at its own cost and expense all patent claims or patent litigation (including any claim for damages or royalties which may be made or instituted against Lottery, or to which Lottery may be a party) based upon or by reason of the installation and operation of the System, not combined with any part of equipment or device not furnished by Scientific Games, and to indemnify and to hold Lottery harmless against any damages or liability incurred or sustained by Lottery by reason of such patent claim or litigation.

12.6. Lottery shall notify Scientific Games without delay and in writing if any claims of any kind whatsoever with regard to the System are or have been asserted by any third parties. For the avoidance of doubt, as between the parties, Scientific Games shall have sole control of the defense and/or settlement of all such claims relating to the System, and Lottery hereby agrees to cooperate and provide such assistance in relation thereto as may be reasonably required by Scientific Games. Should any part of the System become, or in Scientific Games' opinion, be likely to become the subject of a claim for infringement, Scientific Games may, at its own expense and option, either procure for Lottery the right to continue to operate such System or replace the applicable component(s) with a non-infringing substitute of the same functionality or modify the applicable component(s) supplied so that it/they become(s) non-infringing or require the return of the applicable System, provided however that if equipment is replaced or modified these shall result in equally suitable substitute equipment.

12.7. This Clause 12 shall survive any cancellation or termination of the Agreement. THIS CLAUSE 12 SETS FORTH THE SOLE AND EXCLUSIVE LIABILITY AND OBLIGATIONS OF SCIENTIFIC GAMES, AND THE EXCLUSIVE REMEDY OF LOTTERY, FOR CLAIMS REGARDING THE INFRINGEMENT OF PATENTS, TRADEMARKS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY AND THE MISAPPROPRIATION OF TRADE SECRETS, WHETHER DIRECT OR CONTRIBUTORY, AND IS IN LIEU OF ALL WARRANTIES EXPRESS, IMPLIED OR STATUTORY IN REGARD THERETO.

12.8 Scientific Games agrees that in the event the Communications Protocol for South Dakota Central Control System - Revision C becomes available and Scientific Games

possesses the right to license such protocol to the Lottery, the Lottery shall have a license in such protocol to the same extent it has a license in Revision D, without any further consideration, as set forth in Schedule 4. If the Lottery obtains a license in Revision C as outlined above said license shall be perpetual to the same extent the Lottery will receive a perpetual license in the Revision D protocol under this Agreement, as if Revision C and Revision D were one in the same protocol.

12.9 The parties acknowledge that one of the primary purposes the parties have entered into this Agreement is the desire of the Lottery to obtain a non-transferable, perpetual license to Scientific Games' Video Lottery Terminal Communications protocol(s) for the South Dakota Central Control System – Revision D and Revision C at the end of the contract term or upon an uncured breach or termination of the Agreement by Scientific Games due to no fault of the Lottery. Scientific Games specifically recognizes the Lottery's desire to obtain a non-transferable perpetual license in the Revision D/Revision C protocol(s). Therefore, subject to Section 12.8, Scientific Games agrees to provide the perpetual license to the protocol(s) pursuant to the terms set forth in Schedule 4 of this Agreement. However, it is expressly understood by the parties that the perpetual license in the Revision D/Revision C protocol(s) shall allow the Lottery to use said protocol(s) in conjunction with any third party vendor providing a central monitoring and control system to the Lottery, in connection with the existing gaming machine population communicating with the System as of the date of termination or expiration of this Agreement for the benefit of the South Dakota Lottery in South Dakota only. Scientific Games acknowledges that the South Dakota Lottery intends that the existing gaming machine population shall continue to communicate with the System and neither objects to such use of the Revision D/Revision C protocols in this manner nor will it impose any additional license fees or other requirement for such continued use. Any clause, section, or provision in this Agreement, including those in the attached Schedules, that contradicts the intent and understanding expressed above shall not be given effect and this Clause 12.9 shall control.

13. SCIENTIFIC GAMES WARRANTIES

13.1. **Support and Maintenance Services, Scope of Work:** Scientific Games warrants that it will perform its obligations under this Agreement using suitably qualified staff and with due care and skill.

13.2. **System Specifications** - Scientific Games warrants that the System, in its unaltered form, as provided under this Agreement will perform in accordance with the manufacturer's published specifications and in accordance with the Functional Specification.

13.3. **Hardware Warranties** – (a) Scientific Games warrants that the Hardware shall conform to the Functional Specifications. If a defect or error is found in the Hardware at any time during the Term and any extensions or renewals of this Agreement, Scientific Games shall promptly and at its sole cost and expense correct such defect. The foregoing warranty shall be the sole obligation of Scientific Games in the event of a defect or error in the Hardware.

(b) The warranty set forth above does not extend to software, hardware or terminals installed by personnel other than those employed or subcontracted by Scientific Games. Further, the warranty shall not apply to:

- (i) defects attributable to use of equipment or software not furnished by Scientific Games or its authorized subcontractors;
- (ii) modification of the System by any person other than Scientific Games or its authorized subcontractors;
- (iii) accident, neglect, misuse, or abuse unless caused by an employee or subcontractor of Scientific Games;
- (iv) use of the goods or services provided hereunder in a manner in violation with the terms of this Agreement; or
- (v) events of force majeure.

13.4. Service Warranty – Scientific Games warrants that Services will be provided in a workmanlike manner by qualified technicians in accordance with the service description applicable at the time of the order. Scientific Games warrants that the System will operate in accordance with the specifications contained in Documentation for the term of the Agreement including any extensions exercised.

13.5. Scientific Game's Software – Scientific Games warrants that its Software, in its unaltered form, will perform in accordance with the manufacturer's published specifications.

13.6. Disclaimer of Warranties – The above warranties are exclusive warranties, and no other warranty, express or implied, will apply. Scientific Games specifically disclaims the implied warranties of merchantability and fitness for a particular purpose.

14. INDEMNITIES FOR THIRD PARTY CLAIMS AND INSURANCE

14.1. Scientific Games shall indemnify, defend and hold Lottery harmless against any loss, liability, costs or expenses (including reasonable advocate's fee) arising out of or related to claims and suits for physical damages to person or tangible property which may be instituted by a third party against Lottery, or to which Lottery may be made a party, arising out of or by reason of the services provided herein by Scientific Games, provided written notice of such claim is given to Scientific Games within ten (10) days after receipt of same by Lottery. Scientific Games shall have the right to participate in all negotiations and litigation in connection therewith, including selection of counsel, and shall not be liable for any costs or expenses incurred by Lottery without Scientific Game's prior written approval, nor shall Scientific Games be responsible for any claim or litigation based on equipment or services not furnished by Scientific Games as part of its obligations hereunder.

14.2. The parties acknowledge and agree that in no event will Scientific Games or any of its affiliated companies be responsible or liable for the payment of winnings, the payment

of any amounts which are to be made pursuant to the laws of South Dakota or any the payment of any other amounts which are to be made by Lottery pursuant to the laws of South Dakota.

14.3. Lottery agrees to defend, indemnify and hold harmless Scientific Games and each other Scientific Games Group Company and its and their officers, directors, employees and agents from and against any and all claims, suits, proceedings, liabilities, demands, actions, losses, injuries, damages and reasonable legal fees and costs arising out of or relating to:

14.3.1. the unlawful or unauthorized use, possession or operation of the Software or System by Lottery or any of its staff, employees, representatives, customers or invitees while such Software or System is on or in a Site;

14.3.2. the violation by Lottery, or any of its staff, employees, or representatives of any proprietary right or intellectual property right of Scientific Games in the Software or the System; and

14.3.3. any breach or alleged breach of its obligations as set out in Schedules 4 or 5 or otherwise contained within this Agreement.

15. LIMITATION OF LIABILITY

15.1. With the exception of the indemnity given by Scientific Games in relation to intellectual property infringement claims described under Clause 12 each Party's total aggregate liability for all claims arising out of or related to this Agreement, whether for breach of contract, warranty or undertaking, in tort for negligence or otherwise, is limited to the total Video Lottery Fees paid and payable by Lottery under this Agreement.

15.2. Under no circumstances will any Party be liable to the other Party or any third party for any incidental, special, indirect or consequential damages, including without limitation economic loss, loss of revenues, profits, contracts, business, opportunity or anticipated savings or for any loss of data, goodwill or reputation, howsoever arising in connection with this Agreement.

15.3. The Parties acknowledge and agree that the sums payable under this Agreement have been determined on the basis of the limits of liability set out in this Agreement, that the sums payable reflect the division of risk set out in this Agreement and that, accordingly, the division of risk is agreed by the Parties to be fair and reasonable in the circumstances.

15.4. Nothing in this Agreement limits or excludes either Party's liability for fraud, or for death/personal injury caused by its own negligence, or any other liability that may not be limited or otherwise excluded by law.

16. FORCE MAJEURE

16.1. Neither party shall be in breach of this Agreement (other than with respect to Lottery's failure to fulfill its payment obligations) where its failure to perform or its delay

in performing any obligation is due wholly or in part to a cause beyond its reasonable control (which could not by reasonable diligence have been avoided) including but not limited to an act of God, acts or policies of any civil or military authority, governmental priorities, civil commotion, war, strikes, lockouts and other labour disputes, fires, floods, earthquake, storm, epidemic, inability to obtain proper and necessary labour, supplies, common carrier services such as power or telecommunication services, electricity, satellite or uplink/downlink/ground station disruption or transportation.

16.2. Each party shall notify the other promptly and in writing of any failure to perform or delay in performing due to a cause set out above and shall provide an estimate as soon as practicable of the time when the obligation will be performed.

17. CONFIDENTIALITY

Any confidential information provided to or developed by Scientific Games in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by Scientific Games without the prior written approval of the Lottery. The Parties agree that they are bound, in the performance of this Agreement, by the provisions of the Confidentiality Agreement attached hereto at Schedule 5.

18. TERMINATION

18.1. Either Party is entitled to terminate this Agreement in writing with immediate effect:

18.1.1. on notice in writing to the other Party in the event that the other Party ceases (or threatens to cease) to do business, becomes unable to pay its debts when they fall due, becomes or is deemed insolvent, has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction), or enters into liquidation whether compulsorily or voluntarily or if any similar event occurs in relation to the other Party in any jurisdiction;

18.1.2. on notice in writing to the other Party in the event that the first Party ceases to be licensed or is notified by any regulatory agency that it may cease to be licensed to conduct its business as required by the gambling or licensing requirements of the jurisdictions in which the first Party conducts its business or, in the case of Scientific Games, provides its services, otherwise than as a result of its conduct or the identity of the other Party;

18.1.3. on notice in writing to the other Party that in the event that the conduct or identity of the other Party is such as to cause a regulatory agency to notify the first Party that its relationship with the other Party will jeopardize the first Party's license or ability to be licensed to conduct its business as required by the gambling or licensing requirements of the jurisdictions in which the first Party conducts its

business or, in the case of Scientific Games, provides its services;

18.1.4. if the other Party commits a material irremediable breach of this Agreement, or where a material breach is capable of remedy, fails to remedy such breach within 20 business days of receipt of written notice from the other Party informing it of such breach. For the purposes of this clause, a breach will be considered capable of remedy if the Party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

18.2. The rights to terminate this Agreement given by this Clause 18 will be without prejudice to any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

18.3. Termination of this Agreement (howsoever occasioned) will not affect the provisions of Clauses 12, 13, 15, 16, 18, Schedule 5, or any other provision of this Agreement intended to have effect post termination, which will survive termination, and any accrued rights or liabilities of the Parties.

18.4 This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the South Dakota Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State. In the event of termination of the Agreement under this clause, the Lottery shall compensate Scientific Games for all costs and expenses incurred in the performance of this Agreement and shall be limited to amount owed Scientific Games at date of termination.

19. CONSEQUENCES OF TERMINATION

19.1. Upon termination of this Agreement:

19.1.1. Scientific Games may, at its option, by suit or otherwise, enforce payment of all due obligations, plus interest and reasonable attorney's fees, and no suit or legal proceedings with respect thereto shall be deemed any waiver of said rights of Scientific Games to resume possession of said System and Software as herein provided.

19.1.2. Lottery shall return to Scientific Games any and all Software or Documentation provided by Scientific Games pursuant to this Agreement, any copies of such software or documents and each party shall return to the other any documents or material containing Confidential Information which belongs to that other with the exception of Scientific Games Video Lottery Terminal Communications Protocol for South Dakota Central Control System – Revision D and Revision C. Scientific Games shall also return or destroy any of Lottery's Confidential Information or Data upon request.

20. GENERAL

20.1. Neither party shall, without the prior written consent of the other party, assign this Agreement or delegate its duties hereunder in whole or part. All of the terms and conditions of this Agreement shall be binding upon and inure to the benefit of any transferee, successor or permitted assign of either party hereto.

20.2. No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this agreement.

20.3. Scientific Games shall not subcontract any portion of the Services to be performed under this Agreement without the prior written approval of the Lottery.

20.4. Any amendment, waiver or variation of this Agreement shall not be binding on the parties unless set out in writing, expressed to amend the agreement and signed by or on behalf of each of the parties.

21. ENTIRE AGREEMENT

This Agreement, including the Schedules and AEGIS-Video Upgrade Statement of Work dated September 19, 2008 annexed hereto, contains and constitutes the entire agreement between the parties relating to the subject matter hereof. Nothing in this Clause 21 shall operate to limit or exclude any liability for fraud.

22. SEVEREABILITY

If any term or condition of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected and will be valid and enforceable.

23. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which so executed will be an original, but together will constitute one and the same instrument.

24. NO WAIVER

A party's failure to require strict performance of any provision of this Agreement will not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement will be effective unless express and in writing, and no effective waiver by a party of any of its rights will be effective to waive any other rights.

25. NOTICES

All notices or communications required to be given by one Party to the other hereunder pursuant to the express requirements of this Agreement shall be given to the respective Parties hereto in writing and shall be delivered by hand or sent by electronic mail or facsimile or through the postal service by recorded delivery, Return Receipt Requested or its equivalent to the postal address stated above, or to the fax or email details below or to such other address as either Party hereto shall designate by written notice to the other

Party hereto. Any such communication shall take effect, if delivered, upon delivery, if posted, seven (7) days after posting and if sent by facsimile or email, when a complete and legible copy of the communication (whether that sent by hand, facsimile or posted) has been received at the appropriate address.

To Scientific Games:

Brennen Lawrence, Vice President & General Manager

Video Gaming Systems

Scientific Games International, Inc.

1500, Bluegrass Lakes Parkway

Alpharetta, Georgia USA 30004

Fax- 678-624-4112

E-mail Brennen.lawrence@scientificgames.com

With a copy to: Scott Stewart, Director of Account Service

E-mail scott.stewart@scientificgames.com

And copy to: Legal Department

To the Lottery:

Norman Lingle, Executive Director

South Dakota Lottery

PO Box 7107

Pierre, SD 57501

Phone – 605-773-5770

Fax – 605-773-5786

Norman.lingle@state.sd.us

26. INDEPENDENT CONTRACTORS

Scientific Games and its agents and employees are independent contractors performing professional services for the Lottery and are not employees of the Lottery

27. APPLICABLE LAW

Venue for any and all legal action regarding or arising out of the agreement shall be solely in the State of South Dakota. This Agreement shall be governed by the laws of South Dakota without reference to the conflict of law provisions contained therein.

28. DISPUTE RESOLUTION

28.1. Any dispute arising out of this Agreement shall be resolved and first proceed through the process outlined in this Clause 28.

28.2. One party shall provide written notification to the other of a dispute. The parties will then have ten (10) business days following receipt of the notification to resolve the dispute between the parties.

28.2. If no resolution is achieved, each party shall then appoint one senior officer or representative with at least the title of Executive Director, Vice President or equivalent, and such officers shall meet to review the dispute and make every reasonable and good faith attempt to resolve it.

28.3. If no resolution is achieved at the Executive Director/ Vice President Level within ten (10) business days of their initial meeting regarding the issue, any controversy or claim arising under this Agreement, or breach thereof will be submitted to at least one session of mediation before a mutually acceptable mediator.

28.4. If mediation does not result in settlement, the parties shall proceed to arbitration. No person serving as mediator may serve as judge or arbitrator in the same grievance.

28.5. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration, in accordance with South Dakota Laws.

28.6. Initiation of arbitration shall occur by written notice to the other party of the intent to arbitrate. The notice must describe the nature of the controversy and remedy sought.

28.7. A three member panel shall be appointed by the parties to arbitrate the dispute. Each party shall appoint one arbitrator, with the third arbitrator being mutually agreed upon. An individual who has a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party may not serve as an arbitrator. All decisions shall be by majority and shall be issued no later than forty five (45) business days after the conclusion of the proceedings.

28.8. Any award or decision is subject to appeal upon proper motion to the appropriate court of competent jurisdiction.

29. PUBLIC ANNOUNCEMENT

Any press release to be provided in relation to this Agreement should be previously agreed to between the Parties.

30. INSURANCE AND BONDING

30.1 Scientific Games shall, for the duration of the Agreement, maintain in effect all insurance as required herein and comply with all limits, terms and conditions stipulated therein. Policies shall provide, or be endorsed to provide, all required coverage. Prior to beginning any work, Scientific Games must provide certificate(s) or certified endorsement(s), as applicable, of the insurance required. Failure to provide the proof of insurance as required may, at the Lottery's option, result in termination of the Agreement. Scientific Games shall not commence work under this Agreement until evidence of all required insurance is provided to the Lottery.

30.1.1 Insurance, except for Workers Compensation, Technology Errors and Omissions, and Cyber Risk, required by this clause shall name the Lottery loss payee as the Lottery's interests may apply; provided, however, that the Lottery shall be named a loss payee. All insurance shall be with insurers rated A-VII or better in the latest Bests Rating Guide and in good standing and authorized to transact business in South Dakota. The coverage provided by such policies shall be primary to any coverage of the Lottery on or related to the Agreement and shall provide that the insurance afforded applies separately to each insured against whom a claim is made, except with respect to the limitation of liability. All required policies shall require thirty (30) days' notice to the Lottery, by certified or registered mail, return receipt requested, prior to any cancellation, refusal to renew or any material change in the nature or extent of the coverage provided. Scientific Games waives all rights against the Lottery and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the required policies. Policies may contain deductibles but such deductibles shall not be deducted from any damages due to the Lottery.

30.1.2 By requiring insurance herein, the Lottery does not represent that coverage and limits will necessarily be adequate to protect Scientific Games and such coverage and limits shall not be deemed as a limitation on Scientific Games liabilities under the indemnities granted to the Lottery.

30.1.3 Scientific Games shall maintain the following insurance in amounts not less than the following:

- i. Worker's Compensation Insurance in amounts as required by statute. Employer's liability with a liability limit of \$500,000 per Accident, \$1,000,000 Disease, Policy Limit.
- ii. Automobile Liability including non-owned and hired with a liability limit of \$5,000,000 per occurrence during the implementation period after which time it will be reduced to \$500,000.
- iii. Commercial General Liability (CGL) and, if necessary, commercial umbrella or excess liability with a limit of not less than \$5,000,000 each occurrence/\$5,000,000 annual aggregate. The Schedule of Underlying Insurance in the Umbrella Policy shall include the CGL, the auto policy and the Employer's Liability Policy.
- iv. Comprehensive Crime with a liability limit of \$10,000,000 per occurrence having at least the following coverages: dishonesty (blanket coverage), forgery, credit card forgery, theft, embezzlement, wire transfer fraud, computer fraud or theft and other dishonest acts of any employee or agent

whose duties are to provide services under the Agreement. The Lottery shall be named a loss payee on all Comprehensive Crime policies.

- v. Property Insurance for all direct physical loss to computer hardware and software, including mechanical breakdown and extra expense. Limits should be consistent with valuation of hardware, software and time required to restore operations.
- vi. Technology Errors and Omissions coverage with a liability limit of \$10,000,000 per Claim/Annual Aggregate. Coverage shall indemnify the Scientific Games and pay on behalf of Scientific Games to the Lottery for loss which may be incurred due to computer error, machine error, any communication line problems caused by Scientific Games, its officers, employees, agents, subcontractors or assigns.
- vii. Cyber Risk having the following coverages: information or identity theft, liability for misuse or disclosure of third party data, liability for loss of data, outages or spread of viruses, attacks, destruction or disclosure of data or electronic information with a liability limit of \$10,000,000 per Event/Annual Aggregate.

31. Bonding

31.1 Within thirty (30) calendar days of the effective date of the Agreement, Scientific Games shall procure, at its own cost, and submit to the Lottery a performance bond payable to the Lottery in the amount of five million dollars (\$5,000,000) for years one (1) through five (5) of performance and conditioned on Scientific Games' faithful performance. The performance bond for years six (6) through ten (10) shall be in the amount of three million dollars (\$3,000,000). Scientific Games shall pay premiums on the performance bond. If the Vendor defaults in the performance of its contractual obligations or if the Lottery incurs damages due to the Vendor's breach of its duties, the surety, with concurrence of the Lottery, shall have the option to cure the default or tender funds sufficient to pay the cost of completion, up to an amount not to exceed the penal sum of the bond. With the concurrence of the Lottery, the surety may assume the remainder of the Agreement to perform or sublet. The bond shall be in a form customarily used in the lottery industry, and be acceptable to the Lottery, and shall be written by a surety authorized to do business in South Dakota that is acceptable to the Lottery. The bond shall be in effect at all times during the term of the Agreement and any extensions or renewals thereof and for ninety (90) days following the conclusion of the Agreement. The bond may be renewed on an annual basis. Scientific Games or warrants that it will maintain the required performance bond coverage as described herein without any lapse in coverage. Based upon Scientific Games' performance during the initial Agreement term, the Lottery reserves the right to discontinue performance bond requirements for any contract extensions.

31.1.1 Failure on the part of the Scientific Games to furnish such bond, or other proof of bond coverage acceptable to the Lottery within thirty (30) days of Agreement execution, or to maintain the bond in full force and effect during the

term of the Agreement and any extension or renewal thereof, unless Lottery discontinues performance bond requirements at its sole discretion, shall be a material breach of the Agreement and shall be considered cause for the Lottery to declare Scientific Games in default under this Agreement. The Lottery's receipt of such bond or other proof of coverage does not constitute approval of the bond's coverage nor do the bonds relieve Scientific Games from the faithful and honest performance of this Agreement.

31.2 The bond must specifically refer to the Agreement and shall bind the surety to all of the terms and conditions of the Agreement. The performance bond shall be forfeited if the Agreement is terminated due to Scientific Games default, breach of the Agreement by Scientific Games, or Scientific Games bankruptcy, whether voluntary or involuntary.

32. USUFRUCT

If, for any reason other than breach of this Agreement by the Lottery, including a material adverse change in SGI's financial condition which causes Scientific Games to lose its ability to service this Agreement, the Lottery shall acquire a usufruct in the source code owned by or licensed to SGI in conjunction with the Agreement and which is necessary to provide such services. Said usufruct shall be limited to the right of the Lottery to possess and make use of such source code solely for the use and benefit of the Lottery in operating, maintaining, altering, upgrading and improving the programs and System being used by the Lottery under the Agreement. Such usufruct shall be limited in time to the duration of the Agreement, and in scope for the programs being used by the Lottery under the Agreement.

This 14 day of May, 2009.

IN WITNESS WHEREOF, the Parties hereto execute this Agreement

Scientific Games International, Inc.

By: 

Name: Brennen D. Lawrence
Title: VP GM Video Gaming

**South Dakota Lottery, a Division
of the Department of Revenue and
Regulation**

By: 

Name: Paul Kinsman
Title: Department of Revenue & Regulation

SCHEDULE 1

Definitions and Interpretation

"Acceptance Certificate" means the certificate to be issued by Scientific Games and signed by the Lottery following successful completion of the Acceptance Tests to the reasonable satisfaction of the Parties.

"Acceptance Date" means the date on which the Acceptance Certificate is signed by Lottery.

"Acceptance Tests" means the acceptance tests as agreed by the Parties in writing for the purposes of determining that the System complies with the Functional Specifications.

"Affiliate" shall mean in relation to either Party, a "group company", and any body corporate which is that Party's "subsidiary" or "parent" company, or a subsidiary of that company's parent company, with "subsidiary", "holding company" and "parent company" having the meanings given to them by the State of Delaware.

"Bi-Monthly Payment Period" means, unless otherwise agreed, the periods by which payment of the Video Lottery Fee payable to SGI shall be measured. For each calendar month, payment of the Video Lottery Fee shall be made by the Lottery within fourteen (14) days after the fifteenth and last day of such calendar month;

"Change Control" means the agreed change mechanism set out in the mutually agreed upon Project Plan.

"Central Monitoring and Control System" or "CMCS" means a computer system operated by the Lottery to which all activated Terminals in the system are connected, and which is able to register all gaming taking place through such activated Terminals and to supervise, control, monitor and audit all operations carried out through in or through such Terminals and to store and provide reports and information on the afore mentioned matters, and shall, for the purposes of this Agreement, consist of the Hardware, the System, and the Software.

"Central Site" shall mean the offices of the Lottery or such other licensed premises for the operation of the primary hardware system.

"Confidential Information" means all information described as Confidential Information relating to the System and this Agreement in accordance with the Confidentiality Agreement attached as Schedule 5 to this Agreement;

"Data" means data deriving from the business and operation of Lottery or its Licensees with respect to the operation of the System (including information as to Gross Winnings).

"Documentation" means operating manuals, user instructions, technical literature, on-line help and other documentation and all other related materials in eye-readable form

containing sufficient up-to-date information for the proper use and maintenance of the System, to be supplied by Scientific Games under this Agreement.

"Due Date" means thirty (30) days after date of invoice issued by Scientific Games to the Lottery.

"Effective Date" means the date as set out at the start of this Agreement.

"Extended Term" shall have the meaning as defined in Clause 9.2.

"Functional Specification" means the functional specification of the System agreed upon in writing by the parties and includes the South Dakota Lottery's Customer Requirements Document (CRD)..

"Gaming Machine" means, "Video lottery machines," or "machine," any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game, including but not limited to video poker, keno, and blackjack, authorized by the commission utilizing a video display and microprocessors in which, by chance, the player may receive free games or credits that can be redeemed for cash. The term does not include a machine that directly dispenses coins, cash, or tokens.

"Net Machine Income" shall mean the total value of money put into the Video Lottery Machines minus credits paid out in cash.

"Gross Winnings" means the total paid out as prizes and received by the Player whether cash, checks, prizes or non-cash equivalent (such as jackpot).

"Hardware" shall have the meaning described in the agreed upon and signed Project Plan.

"Implementation Period" shall mean the period during which the prior video central monitoring system will be replaced by the new AEGIS Video system to be provided under this agreement and all retailer locations have been successfully migrated to the new system.

"Intellectual Property" means patents, patent applications, and patent rights; copyrights, copyright applications, and copyright registrations; trademarks, trademark applications, trademark registrations, and trademark rights; trade secrets; and all other intellectual property and proprietary information rights as may exist now or hereafter come into existence; all modifications, continuations, renewals, and extensions of any of the foregoing; and all claims, actions, causes of action, damages, costs, expenses, profits, penalties, recoveries, and remedies relating to any past, present, or future infringement of any of the foregoing; arising under the laws of any country, state, or jurisdiction in the world.

"Licensee" means one of the Lottery's approved licensees operating licensed Sites in the State in accordance with its license conditions or other regulations in force.

"License Fee" shall have the meaning as detailed in Clause 6 of the Agreement.

"Project" means all of the tasks to be performed, and the timeframe for their completion, under this Agreement.

"Project Manager" means the individual assigned by the Lottery and Scientific Games respectively to manage the Project and administer this Agreement.

"Project Plan" shall have the meaning as detailed in Clause 2.2 of the Agreement.

"Scientific Games Group" means Scientific Games and its Affiliates.

"Remote Site" means any approved location in at which licensed Gaming Machines are operated.

"Services" refers to the distribution or rendering of installation, testing and training services provided by Scientific Games under this Agreement and the Support and Maintenance Services.

"Site" or "Sites" means those physical locations in the State of South Dakota on which Lottery or his appointed Licensees are authorized to operate licensed Terminals and which hold all appropriate premises and other licenses as may be required from time to time under the laws of the State of South Dakota.

"Software" means the proprietary computer software owned or licensed by Scientific Games comprising the computer software component of the System and which is required to interface with Terminals to make it perform in accordance with the Functional Specification, and includes additions, modifications, alterations, new releases, and updates to Software. Software shall not include Scientific Games' communication for South Dakota Central Control System – Revision C and D, which are the subject of a separate license agreement set forth in Schedule 4.

"Support and Maintenance Services" means the services provided by Scientific Games according to Schedule 2 for the ongoing support and maintenance of the System.

"System" means Scientific Games' proprietary AEGIS (Advanced Entertainment Gaming & Information System) Central Monitoring and Control System comprising all Software and related Support and Maintenance Services, but excluding Hardware.

"Term" means the term of this Agreement as specified in Clause 9.1.

"User Acceptance Testing (UAT)" means testing conducted by the Lottery.

"Video Lottery Fee" means, unless otherwise agreed, the amounts to be paid to SGI as described in Clause 6.4.

SCHEDULE 2

SUPPORT AND MAINTENANCE SERVICES

Part 1

1. Scope of Support and Maintenance Services

The Support Services to be provided by Scientific Games are all the services set out in Part 1 of this Schedule in relation to the functioning of the AEGIS-Video software and Scientific Games supplied Hardware.

a. Error Corrections

During the term of this Agreement, Scientific Games shall use commercially reasonable efforts to correct any programming error or deficiency reproducible by either the South Dakota Lottery or Scientific Games in the AEGIS-Video software and Scientific Games supplied hardware attributable to Scientific Games with a level of effort commensurate with the severity of the error and to devote all reasonably available resources to that end, provided that Scientific Games, upon agreement from the Lottery, shall have no obligation to correct errors which do not have a material impact upon use of the Central Monitoring and Control System. Upon identification of any error, Scientific Games shall use commercially reasonable efforts to provide and gather enough information to locate the error. Scientific Games shall not be responsible for correcting any errors not attributable to Scientific Games. Software errors attributable to Scientific Games shall be those that are reproducible by either the South Dakota Lottery or Scientific Games on unmodified AEGIS-Video software.

b. Time Allocation

Upon acceptance of the System Scientific Games shall provide a maximum of 1,000 hours per calendar year, or pro-rated portion thereof, allocated for all efforts associated with support of the Lottery. The 1,000 hours will apply to resource interactions with the Lottery as described below. Such number of hours cannot be carried over to following years and the 1,000 hours shall include, but is not limited to the following:

- 24/7, 365 day telephone support via the Scientific Games National Response Center for critical and non-critical issues initiated by South Dakota Lottery employees. The initial contacting of the NRC for any issue does not apply towards the 1,000 hours.
- Periodic software releases to correct Severity Level 3 and Severity Level 4 issues that are outside the functional specifications.

- Engineering support for system configuration questions, changes and any other operational support questions.
- Engineering resource efforts associated with System enhancement requests.
- All Scientific Games Video Services provided to support the Lottery, including scoping and developing Enhancements to video lottery.

Scientific Games will monitor the yearly allotment of hours and will periodically or at the Lottery's request inform the Lottery of the number of support hours remaining for a calendar year. If the yearly hours are exceeded Scientific Games will provide the Lottery a statement of work including pricing for any additional support.

Once the hours for the year are exhausted all efforts applied by Scientific Games to South Dakota Video Lottery will be on a time and materials basis to be billed on a monthly basis at Scientific Games' standard hourly rate. Scientific Games shall notify the Lottery of any change in such hourly rate.

c. Telephone Support

Telephone support shall include:

i. 24-Hour Call Center

Scientific Games will maintain a Call Center to have 24-hour access in the event of an emergency. The escalation procedure shall be provided to the Lottery.

ii. E-Mail

An email address will be provided that will allow Lottery to send questions and receive answers to questions about the system.

d. Contact Persons

Scientific Games shall appoint an individual within Scientific Games' organization to serve as the primary contact between Scientific Games and Lottery.

2. Levels of Severity

All problem calls are categorized into four levels to determine the speed of investigation and resolution. Scientific Games will address problems encountered with application programs, data corruption, Scientific Games supplied hardware, or any other situation where the customer demonstrates that the AEGIS-Video software does not perform as stipulated.

a. Severity Level 1

Loss of revenue and/or production system shutdown – These are the most critical errors or failures. While they rarely occur, the AEGIS-Video production support staff is prepared to deal with instances of system shutdown. Scientific Games will confirm receipt of notification and commence action within 1 hour of being notified.

b. Severity Level 2

Production system is impaired, but no loss of revenue – What separates these issues from Severity Level 1 issues is that the system continues to operate and generate revenue. In these instances, Scientific Games will begin problem resolution efforts on the next business day following notification. Scientific Games' will provide a mutually agreed upon work around within 15 days.

c. Severity Level 3

Production system is impaired, but there is a workaround – In these instances, Scientific Games will implement a workaround that keeps the system operating and generating revenue. These system errors of lesser severity are resolved with the next periodic maintenance release of the AEGIS-Video software.

d. Severity Level 4

Enhancements and general business improvements – Often over the lifetime of the Central Site system, Lottery may request changes in the system's functionality. All efforts for enhancement requests will be charged to the allocation of 1,000 billable hours per contract year. Any efforts exceeding such annual 1,000 work hour allocation shall be billed on a time and materials basis at Scientific Games' then current standard hourly rate. Scientific Games will provide estimates of the expected time and material charges, to be approved by the Lottery, prior to proceeding with the work.

3. Complaints Procedure

Without prejudice to the Lottery's other rights, if Scientific Games fails to respond within the time periods set out in paragraph 2 of Part 1, the Lottery may notify a

complaint to Scientific Games' Account Manager for the Lottery. Scientific Games agrees the Account Manager will address the complaint forthwith. If the Account Manager fails to respond in accordance with this paragraph, Scientific Games will ensure that responsibility for responding to the complaint is passed to Scientific Games' Vice President & General Manager for Video Gaming Systems.

4. On Site Audit

At Lottery's request, Scientific Games will permit Lottery to inspect during any business hours premises at which Scientific Games is providing the Support Services and will comply with reasonable requests by Lottery for information about the Support Services.

5. Updates and Fixes

- a. Scientific Games will release updates to the AEGIS-Video software annually at no additional cost to Lottery as long as the total number of support hours is available. If the Lottery requests additional releases or the annual release exceeds the total number of support hours the request will be estimated separately.
- b. Third-party updates will be made at Scientific Games' discretion with approval by the Lottery.
- c. Scientific Games will test all updates prior to release and warrants that updates will be fit for purpose. South Dakota Lottery may conduct a UAT on all updates and releases prior to installation.
- d. All updates will be released with appropriate documentation.
- e. Scientific Games will ensure that the updates will not reduce the functionality of the Central Site system.

Part 2

6. Exclusions

Scientific Games is not required to provide any Support Services relating to problems arising out of:

- a. Use of the AEGIS-Video software or Scientific Games supplied hardware in a manner for which they were not designed;
- b. Accident, negligence (other than the negligence of Scientific Games) or misuse of the AEGIS-Video software or Scientific Games supplied hardware;

- c. Use of the AEGIS-Video software on a CPU other than the CPU for which such AEGIS-Video software was designed and licensed for use;
- d. Faults not associated with the AEGIS-Video software; or
- e. Lottery's failure to comply with this Agreement or any other agreement between the parties.

Part 3

7. The Lottery shall do the following:

a. Lottery's Assistance

Lottery will provide Scientific Games with reasonable access to all necessary personnel to answer questions about any problems reported regarding the Central Site system together with any information necessary to enable Scientific Games to comply with its obligations under this agreement.

SCHEDULE 3

Lottery's Obligations

- (a) Lottery shall cooperate in every way with Scientific Games for the proper installation and efficient operation of the CMCS and shall make available such facilities as may be required to perform installation, testing and maintenance operations.
- (b) The Lottery shall provide written acceptance of the functional specifications prior to beginning of the development of such functionality.
- (c) Any work exceeding 1000 hours will be presented to the Lottery in a written proposal by Scientific Games and the Lottery shall accept or reject such proposal in writing within fourteen (14) business days of receipt.
- (d) The Lottery shall provide the following in conjunction with the start of the project:
 - a. A list of all gaming machine models, by manufacturer, currently installed in production
 - b. A list of all approved chip sets
 - c. A sample of all chips sets which are currently in production
 - d. One gaming machine from each approved manufacturer to be shipped to Scientific Games' Alpharetta test lab.
- (e) The Lottery will be responsible for all shipping costs associated with providing software and gaming machines to Scientific Games for development and support.

SCHEDULE 4

SOFTWARE LICENSE AGREEMENT

This Software License Agreement ("Software License Agreement"), is made this 4 day of May, 2009, by and between **Scientific Games International, Inc.**, a Delaware corporation with its principal place of business located at 1500 Bluegrass Lakes Parkway, Alpharetta, GA 30004 ("**Scientific Games**") and **The South Dakota Lottery**, a division of the Department of Revenue & Regulation, with offices located at 207 East Capitol, PO Box 7107 Pierre, SD 57501 ("**Licensee**").

WHEREAS, Scientific Games, and Licensee have entered into an agreement for the provision of the AEGIS®-Video System (the "Central Monitoring Control System Agreement"), including Scientific Games' proprietary communication protocol (the "Scientific Games Proprietary Materials"); and

WHEREAS, Scientific Games, desires to provide to Licensee the Scientific Games Proprietary Materials on a non-exclusive basis, for the sole purpose of implementing the Scientific Games, Proprietary Materials into Licensee's AEGIS®-Video System in South Dakota (the "Purpose").

NOW, THEREFORE, in consideration of the above, and the mutual covenants and agreements herein, Licensee agrees to the following:

1. **LICENSE GRANT:** In consideration of the License Fee set forth in Section 6 of the Central Monitoring Control System Agreement, Scientific Games hereby grants Licensee a perpetual, non-exclusive right to use the Scientific Games Video Lottery Terminal Communication Protocol for the South Dakota Central Control System – Revision C (if it becomes available to Scientific Games and Scientific Games is authorized to license it) and Revision D, solely for the benefit of Licensee in South Dakota during the term of the Central Monitoring Control System Agreement. Equipment and software installed at remote sites constitute a separate agreement between Scientific Games and the gaming machine operator or manufacturer, as applicable, and are not covered by this licensing agreement. Pursuant to this grant, the Lottery is authorized to use the protocol software for the purposes of communicating data and for internal business purposes solely in connection with Lottery's operation of a video lottery central monitoring and control system in South Dakota. The Lottery may make the minimum number back-up or archival copies of the software as are needed to comply with the Lottery's written policies and procedures. The software is licensed for use only as set out above and the Lottery shall not make any copies or use thereof except as expressly permitted herein.

2. **TERM AND TERMINATION:** This Software License Agreement shall continue until the expiration or termination of the Central Monitoring Control System Agreement, including any extensions thereof, at which time all copies and partial copies

of the Software and Scientific Games proprietary materials in Licensee's possession in whatever form shall be returned to Scientific Games. Provided that such expiration or termination is not due to the breach of the Central Monitoring Control System Agreement by the Licensee, Scientific Games agrees that the term of the license granted hereunder to the Lottery for the Scientific Games Video Lottery Terminal Communication Protocol for South Dakota Central Control System - Revision C and Revision D for use in connection with the gaming machine population communicating with the AEGIS®-Video System as of the termination or expiration of the Central Monitoring Control System Agreement shall be perpetual.

3. **CONFIDENTIAL INFORMATION:** Licensee and Scientific Games, agree that the Scientific Games Proprietary Materials, including written documentation, oral discussions, and any other form of communication providing Licensee with information relating to the Scientific Games, Proprietary Materials are proprietary and confidential to Scientific Games. As such, Licensee and Scientific Games, agree that the Scientific Games Proprietary Materials and any other proprietary information which is disclosed by Scientific Games, to Licensee in connection with delivery to Licensee by Scientific Games, of the Scientific Games Proprietary Materials (referred to collectively as "Confidential Information") will be maintained by Licensee in confidence to the extent allowed by law, and shall not be reverse engineered, reproduced or otherwise used by Licensee or its employees for any purpose other than as set forth in this Software License Agreement, nor provided or disclosed to any non-employee unless the provisions of Section 7 hereof have been satisfied. Disclosures by Licensee shall only be made to employees within Licensee's organization on a need-to-know basis in order to accomplish the Purpose and the Confidential Information shall only be provided to those employees who are bound to protect the confidentiality of such information. The disclosure by Scientific Games, to Licensee shall impose no obligation upon Licensee with respect to any portion of the Confidential Information which (i) is now, or which hereafter, through no act or failure on the part of Licensee becomes generally known or available to the public; (ii) is furnished to Licensee in good faith by a third party without restriction on disclosure; (iii) is known to Licensee at the time of receipt of Confidential Information shown by written documentation; (iv) is independently developed by Licensee without reference to such information as shown by written documentation; or (v) is information communicated in response to a valid subpoena, an order from a court of competent jurisdiction, or a governmental body, provided that Licensee advises Scientific Games, promptly upon becoming aware that Confidential Information is subject to disclosure and uses commercially reasonable efforts to resist disclosure, and if unsuccessful, to obtain an appropriate protective order. The Confidential Information is being disclosed by Scientific Games, to Licensee for the Purpose, and Scientific Games, solely consents to such limited use. Upon expiration or termination of this Software License Agreement, Licensee agrees to return all Confidential Information to Scientific Games, including any reproductions. The obligations and duties of confidentiality and the protection of confidential information shall survive the termination or expiration of this Software License Agreement.

4. **FUTURE PROTOCOL LICENSING:** Licensee has no obligation to negotiate a license for any other version of the Scientific Games Proprietary Materials and Scientific Games, has no obligation to offer or provide any additional licenses.

5. **STANDARD OF CARE:** Licensee agrees to provide the standard of care that Licensee uses to protect its own proprietary materials, but at least a commercially reasonable standard of care, in the protection of the Confidential Information, and not disclose to any third party, subject to Section 7 hereof, the Confidential Information.

6. **LIMITATION ON RIGHTS GRANTED:** No other rights, including, but not limited to rights under any patent, trademark, copyright, trade secret or other right owned or held by Scientific Games, are hereby granted, other than those rights specifically provided for hereunder.

7. **LIABILITY FOR BREACH OF CONFIDENTIALITY:** Licensee will be responsible and severally liable for any breach of this Software License Agreement by any of its employees or by any other individual or entity that obtains or receives Confidential Information from or through Licensee. PRIOR TO LICENSEE DISCLOSING ANY CONFIDENTIAL INFORMATION TO ANY NON-EMPLOYEE, LICENSEE SHALL BE REQUIRED TO OBTAIN THE WRITTEN APPROVAL OF SUCH DISCLOSURE FROM SCIENTIFIC GAMES AND EXECUTE A SOFTWARE LICENSE AGREEMENT, SIMILAR TO THIS AGREEMENT, OR A NONDISCLOSURE AGREEMENT, WHICHEVER IS APPROPRIATE AS DETERMINED BY SCIENTIFIC GAMES, IN ITS SOLE DISCRETION. Such approval by Scientific Games shall not be unreasonably withheld.

8. **DISCLOSURE OF CONFIDENTIAL INFORMATION:** Licensee acknowledges that any unauthorized use or disclosure of the Confidential Information shall cause irreparable damage to Scientific Games. If an unauthorized use or disclosure occurs as a result of the acts or omissions of Licensee, Licensee will promptly notify Scientific Games, and will take, at Licensee's expense, all steps necessary to recover the Confidential Information and to prevent its unauthorized use or dissemination, including availing itself of actions for seizure and injunctive relief. If Licensee fails to take these steps in a timely and adequate manner, Scientific Games, may take them in its own or Licensee's name at Licensee's expense.

9. **REMEDIES:** In the event of a material breach by Licensee of any of the terms of this Software License Agreement, Scientific Games may provide Licensee with written notice and ten (10) days to cure such breach. If Licensee has failed to cure such breach within the ten (10) day period, if applicable, this Software License Agreement shall automatically terminate. Notwithstanding the foregoing, any breach of Section 3 above by Licensee shall give Scientific Games, the right to terminate this Software License Agreement immediately upon sending a written notice of termination to Licensee. This provision does not prevent Scientific Games, from pursuing any and all other remedies available, either at law or in equity.

10. **NOTICE:** Any notice to be given pursuant to the terms of this Software License Agreement shall be addressed to the Vice President/GM of Video Gaming Systems of SCIENTIFIC GAMES, with a copy to Legal Department; and/or the Executive Director of Licensee. Any notice sent pursuant to the terms of this Software License Agreement shall be sent by overnight courier or facsimile transmission to the appropriate address listed above or the following facsimile numbers:

Scientific Games: 678-624-4112

Licensee: 605-773-5786

11. **RELATIONSHIP BETWEEN PARTIES:** The relationship between SCIENTIFIC GAMES and Licensee established by this Software License Agreement shall not be construed to make either Party the Licensee, partner, joint venturer, or legal representative of the other, nor shall this Software License Agreement be deemed to establish a joint venture, partnership, or agency relationship.

12. **GOVERNING LAW AND VENUE:** This Software License Agreement shall be construed according to the laws of South Dakota, without reference to any conflict of law rules

13. **ASSIGNMENT:** The license rights granted hereunder are personal to Licensee. Licensee may not assign, sublicense or otherwise transfer this Software License Agreement to a third party without the prior written consent of SCIENTIFIC GAMES. Any unapproved assignment, sublicense or transfer shall be null, void and of no force or effect whatsoever. Scientific Games, shall have the right to review any request for assignment, sublicense or transfer and accept or refuse such assignment, sublicense or transfer in its own discretion. Furthermore, any such assignment, sublicense or transfer shall be contingent upon the successful completion of a background due diligence investigation of the transferee/assignee prior to the transfer or assignment of the Software License Agreement of Licensee. This Software License Agreement shall bind the successors in interest of the Parties hereto.

14. **NO WAIVER:** The failure of a Party to enforce at any time any of the provisions of this Software License Agreement, or the failure to require at any time performance by the other Party of any of the provisions of this Software License Agreement, will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of a Party to enforce each and every such provision thereafter.

15. **SEVERABILITY:** If any provision in this Software License Agreement is found or held to be invalid or unenforceable, the meaning of said provision will be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation shall save such provision, it will be severed from the remainder of this Software License Agreement, as appropriate. The remainder of this Software License Agreement shall remain in full force and effect unless the severed provision is essential and material to the rights or benefits received by either Party. In the event that this Software License Agreement is found to be unenforceable in its entirety by a court of

competent jurisdiction, the Parties agree that the obligation of confidentiality shall be considered collateral and shall remain in full force and effect.

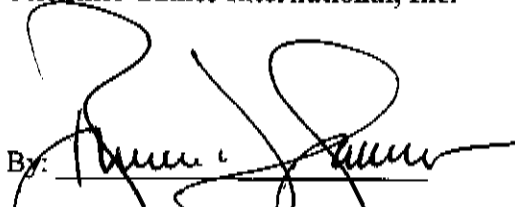
16. **ENTIRE AGREEMENT /MODIFICATION:** This Software License Agreement is the entire understanding and between the Parties as to the subject matter contained herein. The agreement shall not be altered, modified, or varied except in a writing signed by the Parties.

17. **DISCLAIMERS:** Scientific Games represents to Licensee that the Scientific Games Proprietary Materials provided to Licensee are generally accurate and correct. However, in no event shall Scientific Games, be held liable for errors, omissions or inaccuracies of any kind. EXCEPT AS OTHERWISE PROVIDED IN THE CENTRAL MONITORING CONTROL SYSTEM AGREEMENT, THE SCIENTIFIC GAMES PROPRIETARY MATERIALS ARE BEING PROVIDED AS IS, WITH ALL FAULTS AND WITHOUT ANY WARRANTY, INCLUDING WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND WARRANTY OF TITLE. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER RESULTING FROM ANY LOSS OF USE, DATA OR PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS SOFTWARE LICENSE AGREEMENT WHETHER IN CONTRACT OR TORT INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE FORESEEABLE.

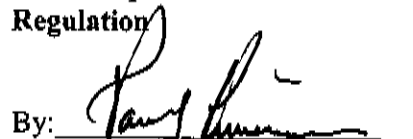
18. **NO THIRD PARTY BENEFICIARIES:** This Software License Agreement is solely for the benefit of Scientific Games, and Licensee and shall not be deemed to grant any right or interest whatsoever to any third party.

IN WITNESS WHEREOF, the Parties hereto have caused this Software License Agreement to be executed by their respective duly authorized representatives as of the earliest date set opposite their respective signatures herein below.

Scientific Games International, Inc.

By: 
Name: Brennen D. Lawrence
Title: VP GM Video Gaming

**South Dakota Lottery, a Division
of the Department of Revenue and
Regulation**

By: 
Name: Paul Kinsman
Title: Department Secretary

SCHEDULE 5

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made this 14 day of May, 2009, by and between **Scientific Games International** ("**Scientific Games**"), a Delaware corporation with its principal place of business located at 1500 Bluegrass Lakes Parkway, Alpharetta, GA 30004 and **The Lottery** ("**Recipient**"), a division of the Department of Revenue & Regulation, with offices located at 207 East Capitol, PO Box 7107, Pierre, SD 57501.

1. The parties agree that, as used in this Agreement, the term "Confidential Information" means all information in tangible or intangible form (including, without limitation, financial information, computer programs, code, software, technical drawings, algorithms, protocols (other than Scientific Games Video Lottery Terminal Communication Protocol for South Dakota Central Control System – Revision C and Revision D), printing specifications, technical expertise, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics, reports, ticket test results, charts, graphs, electrical measurement readings, and technical, business and product development plans and strategies); information disclosed in circumstances of confidence; or information which would be understood by like parties exercising reasonable business judgment at the time of disclosure to be proprietary which is disclosed to or otherwise acquired by Recipient, but does not include information that is:
 - a. generally known to the public;
 - b. already known to Recipient at the time of such disclosure, as documented by a written, dated record in Recipient's possession before the date of such disclosure; or
 - c. subsequently received by Recipient in good faith from a third party having the prior right to make such disclosure.
2. With respect to Confidential Information, Recipient shall:
 - a. use the Confidential Information only as necessary for the purpose of discussing and providing goods and services to the LOTTERY in relation to the use of the AEGIS-Video® video lottery monitoring system;
 - b. hold the Confidential Information in confidence and protect it in accordance with the same degree of care with which it protects its own Confidential Information of like importance which it does not wish to disclose, but in no event with less than reasonable care;

- c. refrain from making a copy or duplicate of the Confidential Information, or from allowing anyone else to copy or otherwise duplicate any of the Confidential Information then under its control, except as otherwise set forth in the Agreement signed on even date between the parties for the Supply of the AEGIS-Video® video lottery monitoring system;
 - d. promptly notify Scientific Games in the event that Recipient receives notice that any third party seeks to legally compel Recipient in a judicial, administrative or governmental proceeding to disclose any of the Confidential Information, so that Scientific Games, may elect whether, at its expense, to seek a protective order or other appropriate remedy;
 - e. refrain from performing any reverse engineering upon the Confidential Information, and refrain from performing any other testing or analysis upon the Confidential Information for the purpose of gaining a competitive advantage; and
 - f. obtain the prior written consent of a corporate officer of Scientific Games, to any use or disclosure of any Confidential Information that is at variance with the terms of this Paragraph 2.
3. Upon the reasonable request of Scientific Games, Recipient shall forthwith return any and all Confidential Information, along with any copies, variations or derivative works, whether or not authorized, and certify the destruction, by a corporate officer, of all notes, memoranda, analyses, reports, evaluations or other documents or data created, developed, modified or otherwise generated by Recipient, or at Recipient's request, and involving the Confidential Information, whether in human-readable or machine-readable form.
4. Recipient shall not disclose or permit access to or use of the Confidential Information to:
- a. its employees, except for employees of Recipient who have actual need for such Confidential Information in the course of their duties in connection with the purpose described in subparagraph 2(a), above, *provided*, that all such employees receiving Confidential Information shall be advised of their obligations to protect the interests of Scientific Games, which obligations shall be identical to the obligations of Recipient under this Agreement; or
 - b. subcontractors, consultants, counsel or agents, unless and until (i) the prior written consent of Scientific Games, has been obtained, and (ii) a nondisclosure agreement containing substantially the same terms as this Agreement has been executed by the person receiving such Confidential Information; and provided further, that disclosure of the Confidential Information by such subcontractors, consultants or agents to their

respective employees, directors or counsel shall be on the same terms as set forth in subparagraph 4(a).

5. Each party shall be entitled at any time and without notice to the other to negotiate, disclose and otherwise deal in any manner and for any purpose with third parties regarding its own Confidential Information.
6. Nothing contained in this Agreement shall be construed as granting or conferring, whether by sale, license or otherwise, to Recipient any right, title or interest in any Confidential Information disclosed, nor in any of the software, patents, trademarks or copyrights of Scientific Games.
7. The Confidential Information provided is believed by Scientific Games, to be generally accurate and correct; however, in no event shall Scientific Games, its directors, officers, agents or employees be liable for errors, omissions or inaccuracies of any kind in the Confidential Information, and Recipient shall be responsible for verifying the accuracy and correctness of all information disclosed, including the Confidential Information. NO WARRANTY OF ANY KIND IS GIVEN REGARDING THE CONFIDENTIAL INFORMATION, THE SAME BEING AS IS, WHERE IS AND WITH ALL FAULTS AND THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE, TO THE EXTENT APPLICABLE, ARE EXCLUDED. THE FOREGOING IN NO WAY MODIFIES THE RETENTION BY SCIENTIFIC GAMES OF ALL RIGHT, TITLE AND INTEREST IN THE CONFIDENTIAL INFORMATION.
8. The provisions hereof shall inure to and be binding upon the successors and assigns of the parties hereto, *provided* that no disclosure of Confidential Information may be made to any successor or assign of Recipient without the written consent of Scientific Games.
9. This Agreement shall be governed in accordance with the laws of South Dakota, without regard to conflict of law provisions.
10. This Agreement shall become effective on the date first shown above, and shall continue for a period of five (5) years from the last date of disclosure of Confidential Information hereunder, at which time this Agreement shall terminate.
11. No waiver of any breach hereof shall be or serve as a waiver of any subsequent breach. No waiver of any breach or modification or amendment hereto shall be effective unless contained in a writing referring hereto and signed by a corporate officer of Scientific Games.
12. Recipient expressly acknowledges and agrees that the terms of this Agreement are reasonable and necessary for the protection of Scientific Games, legitimate business interests. Recipient further acknowledges that a violation of a provision

of this Agreement would cause serious, immediate and irreparable harm to Scientific Games, and therefore agrees that Scientific Games shall be entitled to injunctive relief with the necessity of proving such harm. However, in the event that this Agreement or any part hereof is found to be unenforceable by a court of law, then the parties agree that such unenforceable portion shall be severed and the remainder of this Agreement shall be enforced in accordance with its terms, to the fullest extent of the law.

13. This document represents the full and complete agreement of the parties with respect to the use and confidentiality of the Confidential Information and supersedes all prior communications, agreements or proposals. All Confidential Information disclosed by Scientific Games, subsequent to the date hereof shall be covered hereby unless expressly stated to the contrary, in a writing referencing this Agreement, by Scientific Games, at the time of disclosure. The persons signing below are hereby authorized to bind the respective parties to the terms and conditions of this Agreement.

IN WITNESS WHEREOF the parties have by their duly authorized representatives executed this Agreement as of the date first written above.

SCIENTIFIC GAMES:
Scientific Games International, Inc.

By: 

Name: Brennen D. Lawrence
Title: VP GM Video Gaming

Recipient:
South Dakota Lottery, a Division
of the Department of Revenue and
Regulation

By: 

Name: Paul Kinsman
Title: Department Secretary